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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,487	09/26/2000	Ivy Pei-Shan Hsu	019959-003200US	4335
20350 7590 07/22/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER SALAD, ABDULLAHI ELMI				
ART UNIT 2157		PAPER NUMBER		
MAIL DATE 07/22/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/670,487

Applicant(s)

HSU ET AL.

Examiner

Salad Abdullahi

Art Unit

2157

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-78, 81-84, 86-99 and 103-110 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 70-84, 91-99 and 103-109 is/are allowed.
- 6) ☐ Claim(s) 86, 90, 96-99 and 105 is/are rejected.
- 7) ☒ Claim(s) 87-89 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/21/08&4/16/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/16/2008 has been entered.

Allowable Subject Matter

2. Claims 87-89 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claims 70-84, 91-99, 103-109 are allowed.
4. Applicant's arguments with respect to claims 86, 90, 96-99 and 105 have been fully considered but are moot in view of new grounds of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 86, 90, 96-99 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al., U.S. Patent No. 6,578,066[hereinafter Logan] in view of Brown et al., US Patent No. 6,195,691[hereinafter Brown].

As per claims 86 and 96, and 105 Logan discloses A method of load balancing among host servers of a data network, the method comprising:
receiving, at a load balancing switch of the data network, a query regarding a domain name (see col. 5, lines 46-59); and
selecting, from a plurality of network addresses responsive to the request, a best network address based, by the load balancing switch as a best network address in response to previous queries (i.e., server best response time) (see col. 5, lines 46-59 and tables I-IV).

Logan is silent regarding: selecting network addresses that has been least recently selected.

Brown discloses in analogous art a system and method for locating a closest server in response to a client domain name request including selecting network addresses that has been least recently selected (see col. 3, lines 47067). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention presented with teachings of Logan to incorporate the round trip measuring mechanism as suggested by Andrews, thereby enabling selecting best network server with best response time by considering metrics such as regarding current usage statistics.

As per claims 71-77, Logan discloses the method of claim 70, further comprising:
creating a table, in the load balancing switch, using the round trip time data, wherein the table is indexed by network neighborhood and sending a health check message to each of the plurality of network addresses from the load balancing switch (see tables I and II).

As per claims 90, Logan discloses the method of claim 86, further comprising: creating, in the load balancing switch, a proximity table (see fig. 2, and col. 6, lines 14-41).

As per claim 97-99, Logan discloses the load balancing switch of claim 96, further comprising:
a means for ordering the plurality of network addresses based, at least in part, on a session capacity of a plurality of host server site switches, each said host server site switch being coupled between the load balancing switch and at least one of the host servers(see tables I and II col. 9, lines 12-35).

CONCLUSION

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Salad E Abdullahi whose telephone number is 571-272-4009. The examiner can normally be reached on 8:30 - 5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Salad Abdullahi/
Primary Examiner, Art Unit 2157